

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KEON D. DAVIS,

Plaintiff,

v.

Case No. 13-C-0379

PARKER HANNIFIN
and QPS EMPLOYMENT,

Defendants.

ORDER GRANTING MOTION TO COMPEL

This matter comes before me on a Motion to Compel filed by Defendant QPS Employment Group, Inc. pursuant to Fed. R. Civ. Proc. 37 and Civil L.R. 7(h) and 37. Defendant also requests that, in light of Plaintiff's delay in providing discovery and failure to respond to Defendant's communications, the court award its fees and costs in preparing the instant motion, and inform Plaintiff that this case will be dismissed should Plaintiff fail to provide his responses as ordered by the court. Defendant filed this motion on October 7, 2013. (Dkt. 23.) Plaintiff Keon Davis, proceeding pro se and *in forma pauperis*, has not responded to Defendant's motion as of today, October 22, 2013.

According to Defendant, Plaintiff has also not responded to Defendant's First Set of Interrogatories and Requests for Production, which were due on September 3, 2013. (Davis. Decl. at ¶ 3, Dkt. 24.) After Plaintiff failed to respond to Defendant's multiple attempts, via telephone and mail, to confer with Plaintiff on outstanding discovery, Defendant provided notice to Plaintiff

of Defendant's decision to file a motion to compel and seek appropriate sanctions, including dismissal of the suit. (*Id.* at ¶¶ 3–5.) Plaintiff has never responded to any of Defendant's communications.

Under the federal rules, parties may obtain discovery “regarding any nonprivileged matter that is relevant to any party's claim or defense.” Fed. R. Civ. P. 26(b)(1). Although Rule 37 permits the court to compel discovery, the motion must be accompanied by a written certification by the movant that, “after the movant in good faith has conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action, the parties are unable to reach an accord.” Civil L.R. 37. A motion to compel discovery pursuant to Rule 37(a) is addressed to the sound discretion of the trial court. *EEOC v. Klockner H & K Machines, Inc.*, 168 F.R.D. 233, 235 (E.D. Wis. 1996) (citation omitted). After granting a motion to compel, “the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion . . . to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees.” Fed. R. Civ. P. 37(a)(5)(A). The possible sanctions for failure to serve answers to interrogatories are listed in Rule 37(b)(2)(A)(i)-(vi) and include “dismissing the action or proceeding in whole or in part.” Fed. R. Civ. P. 37(d)(3). Dismissal under Rule 37(d) does not require a finding of willfulness. *Halas v. Consumer Serv., Inc.*, 16 F.3d 161, 165 n.6 (7th Cir. 1994).

Here, Plaintiff has filed no response to Defendant's motion to compel. Accordingly, the court accepts the facts as set forth by Defendant. Plaintiff has failed to respond to Defendant's written interrogatories and document requests. (Davis Decl. At ¶¶ 2, Dkt. 24.) Defendant has attempted to confer with Plaintiff as required by the rules but has received no response from Plaintiff. (Davis Decl. At ¶¶ 3–5, Dkt. 24.) Given Plaintiff's lack of response to Defendant's

discovery requests, several follow-up communications related to discovery, and this motion, the court concludes that the requested relief is warranted.

IT IS THEREFORE ORDERED that Defendant's motion to compel discovery and award fees and costs is hereby **GRANTED**.

IT IS ALSO ORDERED that Plaintiff submit responses to Defendant's Interrogatories and Requests for Production within ten (10) days.

IT IS FURTHER ORDERED that Plaintiff must produce all responsive documents to Defendant within ten (10) days.

IT IS FURTHER ORDERED that Plaintiff must pay Defendant's reasonable expenses, including attorney's fees, incurred in making Defendant's motion to compel. Defendant is directed to file a fee request within ten (10) days of this order. Plaintiff may file a response within seven (7) days of the service of the fee request.

IT IS FURTHER ORDERED that Plaintiff's failure to provide such discovery as ordered by the court will result in the dismissal of this case with prejudice.

Dated this 22nd day of October, 2013.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court